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10/729,968	12/09/2003	William R. Sweeney	021238-414	2214
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EXAMINER ROBINSON BOYCE, AKIBA K				
ART UNIT 3628		PAPER NUMBER		
NOTIFICATION DATE 03/06/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

### Office Action Summary

**Application No.**

10/729,968

**Applicant(s)**

SWEENEY, WILLIAM R.

**Examiner**

AKIBA K. ROBINSON BOYCE

**Art Unit**

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Status of Claims***

1. Due to communications filed 11/26/08, the following is a non-final office action. Claims 1-46 are pending in this application and have been examined on the merits. Previously examiner rejected claims 1-43, however, now, claims 1-46 are rejected as follows.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-10, 15, 16, 31-33, 44, 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder et al (US 2003/0130883 A1), and further in view of Failing, Jr. et al (US 5448226 ), as cited by applicant.

As per claims 1, 31, Schroeder discloses:

a manufacturer providing promotion information to be considered in developing the promotion and price computation model/receiving promotion information..., ([0056], shows web interface allowing access to manufacturer databases to provide alternate promotions));

a retailer providing price determination parameters to develop the promotion and price computation model/receiving price determination parameters..., ([0070], shows

that a combination of conditions (sales price discount, etc.) can be input by retailer to achieve targets and provide solution); and

developing the promotion and price computation model from the promotion information provided by the manufacturer and the price determination parameters provided by the retailer to implement a promotion/developing the promotion and price computation model from the received promotion information..., ([0006], sales lift model, [0067], shows implementing promotions, w/ [0094], autoregressive models are based on price promotions);

Schroeder does not specifically disclose auditing of improperly implemented promotions, however, does disclose future auditing in [0110]. Here, administrators may modify database contents, enter administrative information to document changes for purposes of future auditing in the business planner system, and also in [0042], discloses support vector regression that allows the user to minimize the risk of the prediction to achieve a specified acceptable level of error.

However, Failing, Jr. et al discloses auditing of proper promotional shelf talkers as shown in col. 3, lines 14-51, and in col. 2, lines 3-11 shows that it is highly likely that some errors or omissions will occur, and even a thorough manual audit may miss some of the shelf talkers due to the quantities of changes involved and the similarity of some products, thereby suggesting that it is common to audit for errors. It therefore would be obvious to combine the teachings of Schroeder and Failing, Jr. et al to disclose auditing of improperly implemented promotions. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to audit improperly implemented

promotions with the motivation of determining if and when products are taken on/off promotions.

As per claims 2, 32, Schroeder discloses:

calculating a retail price based on information provided by the promotion and price computation model developed, ([0006], predicting sales).

As per claims 3, 10, 33, Schroeder discloses:

updating the retail price based upon additional information provided by the retailer/ updating the retail price based upon additional information provided by the retailer/ receiving updated promotion.../updating the retail price..., ([0083], change in price).

As per claim 4, Schroeder discloses:

wherein the additional information comprises additional promotion information provided by the manufacturer, ([0072], additional/extended promotion).

As per claims 5, 33, Schroeder discloses:

wherein the additional information comprises additional price determination parameters provided by the retailer, ([0029], cost of retailer fees).

As per claims 6-8, Schroeder discloses:

wherein the step of updating comprises performing real-time updates of the retail price based upon the additional information, wherein the additional information comprises information received on a real-time basis/wherein the information received on a real-time basis comprises real-time promotion information received from the manufacturer/wherein the information received on a real-time basis comprises real-time

price determination parameters received from the retailer, ([0075], shows transactions can be handled via real-time authorization).

As per claim 9, Schroeder discloses:

displaying the retail price on a retail display device, ([0106], retailer information displayed).

As per claim 15, Schroeder discloses:

wherein the promotion information provided by the manufacturer comprises a promotion schedule, ([0077], schedule of promotions).

As per claim 16, Schroeder discloses:

wherein the promotion schedule is stored in a table, ([0077], manufacturer view).

As per claims 44, 46 Schroeder does not specifically disclose the following, however Failing, Jr. et al discloses, that audit reports may be automatic or manual. Remote audits, such as from corporate headquarters, may be conducted through the communications means already in place to provide price change information in col. 3, lines 42-46.

It therefore would be obvious to combine the teaching of Schroeder and Failing, Jr. et al to disclose further comprising the retailer bypassing the promotion and price computation model and manually setting the retail price/further comprising the retailer bypassing tile promotion mid price computation model and manually setting the retail price.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to disclose the above limitation with the motivation of optionally using manual intervention to set retail prices.

As per claim 45, Schroeder discloses:

wherein the system determines whether a promotion has been improperly implemented on the basis of a contract violation, ([0042], shows support vector regression, a recent development in regression practice, allows the user to minimize the risk of the prediction to achieve a specified acceptable level of error).

4. Claims 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teicher et al (US 5,933,813), as cited by applicant, and further in view of Failing, Jr. et al (US 5,448,226), as cited by applicant.

As per claim 21, Teicher et al discloses:

A sales controller in communication with a retailer and a manufacturer, (col. 5, lines 34-54, sales controller represented by the POS bar code reader);

a sales device in communication with the retailer and the sales controller, (col. 5, lines 34-54, sales device represented by the POS unit);

wherein the sales controller is configured to receive promotion information from the manufacturer and price determination parameters from the retailer to calculate a retail price and implement a promotion, and wherein the sales device is configured to receive the retail price from the sales controller (col. 5, lines 34-54, calculates new price);

Teicher et al does not specifically disclose implementing a promotion or wherein the sales controller is configured to audit improperly implemented promotions and send audit reports to the manufacturer, however does disclose determining and displaying sales promotion prices in col. 1, lines 36-51, which suggests ultimately implementing promotions.

However, Failing, Jr. et al discloses auditing of proper promotional shelf talkers as shown in col. 3, lines 14-51, and in col. 2, lines 3-11 shows that it is highly likely that some errors or omissions will occur, and even a thorough manual audit may miss some of the shelf talkers due to the quantities of changes involved and the similarity of some products, thereby suggesting that it is common to audit for errors. It therefore would be obvious to combine the teachings of Schroeder and Failing, Jr. et al to disclose auditing of improperly implemented promotions. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to audit improperly implemented promotions with the motivation of determining if and when products are taken on/off promotions.

As per claim 22, Teicher et al discloses:

further comprising a display controller configured to control a plurality of display devices for displaying the retail price, (Col 1, lines 49-51, data processor controls display).

As per claim 23, Teicher et al discloses:

further comprising at least one display device for displaying the retail price communicated from the display controller, (col. 1, lines 49-51, electronic displays).

As per claim 24, Teicher et al discloses:

further comprising a look-up table generated by the sales controller for indicating the retail price to be displayed by the at least one display device, (col. 4, lines 22-27, list of price reductions).

As per claim 25, Teicher et al discloses:

wherein the sales device comprises a point-of-sale (POS) device that accesses the look-up table to determine the retail price to charge, (Col. 4, lines 22-27, POS unit).

5. Claims 11-14, 34-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder et al (US 2003/0130883 A1), and further in view of Failing, Jr. et al (US 5448226 ), as cited by applicant, and further in view of Teicher et al (US 5,933,813), as cited by applicant.

As per claim 11, neither Schroeder et al nor Failing, Jr. et al disclose the following, but does disclose updating the retail price through a display in [0106].

However, Teicher et al discloses:

wherein the step of updating is performed automatically in response to either additional promotion information provided by the manufacturer or additional price determination parameters provided by the retailer, (Col. 9, lines 58-69, "updated prices" command received automatically). Teicher et al discloses this limitation in an

analogous art for the purpose of initiating a simultaneous, global change in the contents of the display.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to perform updating automatically with the motivation of updating without physical interaction.

As per claim 12, Schroeder et al discloses:  
wherein the step of automatically updating is performed on a real-time basis, ([0075], shows transactions can be handled via real-time authorization).

As per claim 13, neither Schroeder et al nor Failing et al disclose the following, but does disclose updating the retail price through a display in [0106].

However, Teicher et al discloses:  
wherein the automatically updated retail price is passed to a look up table accessible to display devices and point-of-sale devices, (col. 4, lines 6-27, list of price reductions). Teicher et al discloses this limitation in an analogous art for the purpose of showing that price reductions are listed as a source for updating the current price.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to automatically update the retail price according to a look-up table with the motivation of accessing a source to get current prices.

As per claims 14, 34, neither Schroeder et al, Failing et al, nor Teicher et al disclose the following, but Schroeder et al does disclose updating the retail price through a display in [0106].

Therefore, the following is obvious with the Schroeder et al/Failing et al/Teicher et al combination since updates are stored at the computer in Schroeder:

wherein the automatically updated retail price is passed directly to display devices and point-of-sale devices/ further comprising the step of: providing the updated price to a display controller and a sales controller.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention for the automatically updated retail price to be passed directly to a display device and point-of-sale devices with the motivation of using stored data to update prices.

As per claim 35, Schroeder et al discloses:

wherein the steps of updating and providing are performed on an as-needed basis, ([0102], as-needed).

As per claim 36, Schroeder et al discloses:

wherein the steps of updating and providing are performed upon request.  
([0066], request for the modification of sales plans)

As per claim 37, Schroeder et al discloses:

wherein the steps of updating and providing are performed on a real-time basis, ([0075], real-time).

As per claim 38, Schroeder et al discloses:

wherein the promotion information provided by the manufacturer comprises a promotion schedule, ([0077], schedule of promotions).

As per claim 39, Schroeder et al discloses:

wherein the promotion schedule is stored in a table, ([0077], manufacturer view).

6. Claims 17-20, 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder et al (US 2003/0130883 A1), and further in view of Failing, Jr. et al (US 5448226 ), as cited by applicant, and further in view of Kanojia et al (US 6,845,396).

As per claims 17-20, 40-43, neither Schroeder et al nor Failing, Jr. et al disclose the following, but does disclose a promotion schedule in [0077].

However, Kanojia et al discloses:

wherein the promotion schedule is encrypted by the manufacturer/ wherein the decryption on a segment-by-segment basis occurs according to a segment selected from the group consisting of: a time segment, a date segment, and a promotion type segment/wherein the promotion schedule may be decrypted only on a segment-by-segment basis, such that only information from a current segment may be decrypted/ wherein the decryption occurs by way of decryption keys for each segment that are passed to the retailer on a just-in-time basis, (Claim 21, w/Col. 5, lines 44-50, shows an encryption tunnel used bi-directionally with network devices for deploying promotional content).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to incorporate encryption into a promotion schedule with the motivation of providing secure deployment of promotional content.

7. Claims 26-30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Teicher et al (US 5,933,813), as cited by applicant, and further in view of Failing, Jr. et

al (US 5448226 ), as cited by applicant, and further in view of Kanojia et al (US 6,845,396).

As per claim 26 neither Teicher et al nor Failing, Jr. et al disclose the following, but does disclose a list of price reductions col. 4, lines 22-27.

However, Kanojia et al discloses:

wherein the promotion information comprises a promotion schedule, ([0077], schedule of promotions). Kanojia et al discloses this limitation in analogous art for the purpose of showing that promotion information can be scheduled.

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention for promotion information to comprise a promotion schedule with the motivation of documenting promotion information according to a set of events.

As per claim 27, Teicher et al discloses:

wherein the promotion schedule is stored in a table, (col. 4, lines 22-27, list of price reductions).

As per claims 28-30, neither Teicher et al nor Failing, Jr. et al disclose the following, but does disclose a list of price reductions col. 4, lines 22-27.

However, Kanojia et al discloses:

wherein the promotion schedule is encrypted/wherein the promotion schedule may be decrypted only on a segment-by-segment basis/ wherein the promotion schedule may be decrypted by decryption keys received by the sales controller on a just-in-time basis, (Claim 21, w/Col. 5, lines 44-50, shows an encryption tunnel used bi-directionally with network devices for deploying promotional content).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to incorporate encryption into a promotion schedule with the motivation of providing secure deployment of promotional content.

### ***Response to Arguments***

8. Applicant's arguments filed 11/26/08 have been fully considered but they are not persuasive.

As per claim 1, 31, applicant argues that neither Schroeder nor Failing discloses auditing of improperly implemented promotions. However, in the rejection, applicant admits that Schroeder does not specifically disclose auditing of improperly implemented promotions, however, Schroeder does disclose future auditing in [0110], where administrators may modify database contents, enter administrative information to document changes for purposes of future auditing in the business planner system. In the rejection, examiner further shows that Failing, Jr. et al discloses auditing of proper promotional shelf talkers as shown in col. 3, lines 14-51, and in col. 2, lines 3-11 shows that it is highly likely that some errors or omissions will occur, and even a thorough manual audit may miss some of the shelf talkers due to the quantities of changes involved and the similarity of some products, thereby suggesting that it is common to audit for errors.

Claims 2-10, 15, 16, and 32-33 which depend from Claims 1 and 31 are still rejected for at least the reasons Claims 1 and 31 are rejected.

As per claim 21, applicant further argues that Teicher does not disclose a sales controller in communication with a retailer and a manufacturer, and only the merchant in Teicher provides the store computer system with information, and applicant also argues that Teicher does not disclose a sales controller configured to audit improperly implemented promotions and send audit reports to the manufacturer. However, in this case a merchant can be both a retailer and a manufacturer since a merchant deals and trades goods, which can be done on both the retailer and the manufacturer level. In addition, in combination with Failing, Jr. et al, the disclosure of the auditing of improperly implemented promotions is shown as explained above in the preceding paragraphs.

Claims 22-25 which depend from Claim 21 are also rejected for at least the reasons Claim 21 is rejected.

Claims 11-14 and 34-39 depend from claims 1 and 31, and are also rejected for at least the reasons Claims 1 and 31 are rejected.

Claims 17-20 and 40-43 depend from claims 1 and 31, and are also rejected for at least the reasons Claims 1 and 31 are rejected.

Claims 26-30 depend from claim 21, and are also rejected for at least the reasons Claim 21 is rejected.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Akiba K Robinson-Boyce whose telephone number is 571-272-6734. The examiner can normally be reached on Monday-Friday 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7238 [After final communications, labeled "Box AF"], 703-746-7239 [Official Communications], and 703-746-7150 [Informal/Draft Communications, labeled "PROPOSED" or "DRAFT"].

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

A. R. B.  
March 4, 2009

/Akiba K Robinson-Boyce/  
Primary Examiner, Art Unit 3628